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Atlantic Richfield Company v. Christian

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Atlantic Richfield Company v. Christian, 140 S. Ct. 1335 (2020)

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In 1983, the EPA designated roughly 300 miles of polluted mining land near Butte, Montana, as a Superfund site, which the EPA now manages. In 2008, landowners adjacent to the Superfund site brought state law claims against Atlantic Richfield, the company that owned the smelter site. In March 2020, the Supreme Court of the United States ruled that Montana state courts have jurisdiction over the landowners' suit, and that the landowners on this Superfund site qualify as potentially responsible parties.

I. INTRODUCTION

In *Atlantic Richfield Company v. Christian*,[1] the plaintiffs ("landowners") sought restoration damages from the company that owned the smelter site, the Atlantic Richfield Company ("Atlantic Richfield"), for trespass, nuisance, and strict liability under Montana state law. Atlantic Richfield asserted that Montana state courts lacked jurisdiction over the landowners' claims, and that the landowners were potentially responsible parties. The Supreme Court of the United States ("the Supreme Court" or "the Court") considered two issues. First, whether the Comprehensive Environmental Response, Compensation, and Liability Act ("CERCLA") strips Montana state courts of jurisdiction over a suit for restoration damages on a Superfund site.[2] Second, the Court considered whether the landowners qualify as potentially responsible parties ("PRPs") under CERCLA, thereby requiring them to receive approval from the Environmental Protection Agency ("EPA") before initiating individual remedial efforts on their properties.[3] The landowners argued that Montana state courts possessed jurisdiction, and that they did not qualify as PRPs; Atlantic Richfield argued the opposite.[4] The Supreme Court held that CERCLA does not strip Montana state courts of jurisdiction over this suit.[5] Additionally, the Court held that the landowners qualify as PRPs.[6]

II. FACTUAL AND PROCEDURAL BACKGROUND

In 1902, an abundance of copper catalyzed a prosperous mining industry in Butte, Montana.[7] Subsequently, the Anaconda Copper Mining Company constructed three smelters to refine copper in the nearby town

1. 140 S. Ct. 1335 (2020).
2. *Id*. at 1345.
3. *Id*.
4. *Id*. at 1348, 1350, 1352, 1354.
5. *Id*. at 1349.
6. *Id*. at 1352.
7. *Id*. at 1346, 1361.

of Anaconda.[8] In the 1970s, the price of copper began dropping prompting Atlantic Richfield to purchase the Anaconda Company; however, by 1980 Atlantic Richfield shut down the smelters because the copper's value plummeted.[9] Also in 1980, Congress passed CERCLA, which made Atlantic Richfield liable for the tons of arsenic and lead that the smelters emitted during the previous century across the Deer Lodge Valley.[10] The EPA declared over 300 square miles surrounding the smelters as a Superfund site.[11] Accordingly, the EPA created a cleanup plan and still works with Atlantic Richfield to carry out those remedial efforts.[12]

In 2008, ninety-eight landowners with property contaminated by the Superfund site brought a suit against Atlantic Richfield in Montana state court, claiming trespass, nuisance, and strict liability for restoration damages.[13] The landowners sought to use the damages to implement their own remedial efforts on their respective properties.[14] However, the landowners' desired plan exceeded the ceiling set by the EPA as "protective of human health and the environment."[15] For instance, while the EPA's plan called for the maximum soil contamination level to be no higher than 250 parts per million of arsenic, the landowners want to reduce that number to 15 parts per million of arsenic.[16]

In the district court, the landowners and Atlantic Richfield filed competing motions for summary judgment on whether CERCLA precluded the claim for restoration damages brought by the landowners.[17] Atlantic Richfield argued that CERCLA, via Section 113(h), preempted the landowners' claim by stripping Montana state courts jurisdiction.[18] The district court did not address the preemption issue; it dismissed the landowners' case based on Atlantic Richfield's argument that the statute of limitations barred their claims.[19]

The landowners appealed, and the Montana Supreme Court affirmed in part, reversed in part, and remanded the case back to the district court.[20] On remand, the district court denied Atlantic Richfield's motions for summary judgment.[21] Subsequently, Atlantic Richfield petitioned the Montana Supreme Court for a writ of supervisory

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8. *Id*. at 1346.
9. *Id*. at 1345, 1347.
10. *Id*.
11. *Id*.
12. *Id*.
13. *Id*.
14. *Id*. at 1348.
15. *Id*. at 1347–48.
16. *Id*.
17. *Id*. at 1348.
18. Atlantic Richfield Co. v. Mont. Second Judicial Dist. Court, 2017 MT 324, ¶ 12–13, 390 Mont. 76, 408 P.3d 515 (referencing 42 U.S.C. § 9613(h) (2018)).
19. *Id*. at ¶ 5.
20. *Id*.
21. *Id*.

control.[22] The Montana Supreme Court granted the writ and held that Montana courts possessed jurisdiction over the landowners' claim for restoration damages, and that the landowners did not qualify as PRPs.[23] Then, Atlantic Richfield filed a petition for a writ of certiorari, which the Supreme Court granted.[24]

III. ANALYSIS

The Supreme Court ruled on two issues concerning jurisdiction in this case.[25] First, the Court considered whether it possessed jurisdiction to review the Montana Supreme Court's decision.[26] Second, the Court considered whether Montana state courts possessed jurisdiction over the landowners' claim for restoration damages.[27] Then, the Court determined whether it considers the landowners as PRPs.

A. Jurisdiction

The Court held that it possessed jurisdiction to review the Montana Supreme Court's decision.[28] The Court stated it had jurisdiction to review "[f]inal judgments or decrees rendered by the highest court of a State."[29] The Court dismissed the landowners' argument that the Montana Supreme Court's judgment was not fully decided because the Court remanded to the lower court for trial.[30] The Court reasoned that because the Montana Supreme Court heard the case based on a writ of supervisory control, it was not an interlocutory or intermediate litigation.[31] Rather, the Court stated the writ of supervisory control constituted a "self-contained" or "separate" lawsuit that resulted in a final judgment.[32]

Next, the Court affirmed that Montana courts had jurisdiction over the landowners' suit for restoration damages.[33] Atlantic Richfield argued that Section 113(h) of CERCLA expands the type of actions that are precluded from state court jurisdiction under Section 113(b) of CERCLA.[34] Section 113(b) strips state courts of jurisdiction over cases "arising under" CERCLA, while Section 113(h) strips federal courts of jurisdiction over some "challenges" to remedial actions on Superfund

22. *Id*.
23. *Atlantic Richfield Co.*, 140 S. Ct. at 1349.
24. *Id*.
25. *Id*.
26. *Id*.
27. *Id*.
28. *Id*.
29. *Id*. (citing 28 U.S.C. § 1257(a) (2018)).
30. *Id*.
31. *Id*.
32. *Id*.
33. *Id*. at 1349, 1357.
34. *Id*. at 1349 (referencing 42 U.S.C. § 9613(b), (h) (2018)).

sites.[35] The Court rejected Atlantic Richfield's argument because a plain reading of the text rendered it "insurmountable."[36] The Court stated that Section 113(h) and 113(b) work independently of one another, and only overlap when a suit meets three criteria: (1) it challenges a cleanup plan; (2) it is brought in federal court; and (3) it arises under CERCLA.[37] Because the landowners claimed nuisance, trespass, and strict liability, their suits arose under Montana law, not CERCLA, which governs federal laws.[38] Therefore, the Court held that Montana courts have jurisdiction over this suit because it arose under state law claims.[39]

B. The Landowners Qualify as PRPs

Next, the Court discussed the landowners' status as PRPs. As the Court noted, determining whether a party is a PRP is important because this status regulates whether a party needs EPA approval before undertaking remedial efforts on private property.[40] Section 122(e)(6) states that "[w]hen either the President, or a potentially responsible party . . . has initiated a remedial investigation and feasibility study for a particular facility under this chapter, no potentially responsible party may undertake any remedial action at the facility unless such remedial action has been authorized by the President."[41] Both Atlantic Richfield and the landowners agree that this section requires any PRP to get approval from the EPA before taking remedial action.[42] In order to determine if the landowners are PRPs, the Court looked to the list of "covered persons" in Section 107 of CERCLA.[43] Section 107(a) states that any "owner" of "a facility" is a PRP, and that a facility is "any site or area where a hazardous substance has been deposited, stored, disposed of, or placed, or otherwise come to be located."[44] Therefore, the Court held that the landowners are PRPs because arsenic and lead are hazardous substances and are located on their properties.[45]

The landowners put forth two arguments denying PRP status that the Court rejected. The landowners argued that they do not qualify as PRPs because CERCLA's "six-year limitations period for recovery of remedial costs has run, and thus they could not be held liable in a hypothetical lawsuit."[46] In addition, the landowners argued that they do not qualify as PRPs "because they did not receive the notice of settlement negotiations

35. *Id*. (citing 42 U.S.C. § 9613(b), (h)).
36. *Id*. at 1349.
37. *Id*. 1350, 1352 (referencing 42 U.S.C. § 9613(b), (h)).
38. *Id*. at 1350.
39. *Id*.
40. *Id*.
41. *Id*. (citing 42 U.S.C. § 9622(e)(6) (2018)).
42. *Id*.
43. *Id*. (citing 42 U.S.C. § 9607(a) (2018)).
44. *Id*. (citing 42 U.S.C. § 9601(9)(B) (2018)).
45. *Id*.
46. *Id*. (citing 42 U.S.C. § 9613(g)(2)(B) (2018)).

required by Section 122(e)(1)."[47] The Court rejected the landowners' first argument because a landowner can be a PRP even when that landowner can no longer be sued.[48] Additionally, the Court drew on the policy goals behind CERCLA. The Court stated that PRPs include owners of contaminated property, even "innocent landowner[s]" because CERCLA's goal, as its name suggests, is to develop a "Comprehensive Environmental Response" to pollution.[49] The Court pointed out that if the landowners' first argument prevailed, there would likely be tens of thousands of competing cleanup plans headed by individual landowners rather than one comprehensive plan managed by the EPA.[50]

Next, the Court rejected the landowners' second argument. Under Section 122(e)(1) of CERCLA, all PRPs must be notified of settlement negotiations.[51] The EPA has a nonenforcement policy, which provides that the EPA does not seek recovery costs from landowners who did not cause the contamination affecting their property, and who do not interfere with the EPA's cleanup efforts.[52] Under this nonenforcement policy, the EPA did not include the ninety-eight landowners in settlement negotiations; thus, the landowners argued that they could not qualify for PRP status.[53] The Court stated that although the EPA did not follow CERCLA's mandate when it failed to provide the landowners with notice of settlement negotiations, the landowners are nevertheless considered PRPs.[54]

Alternatively, the landowners argued that if they do qualify as PRPS, they qualify as contiguous property owners under Section 107(g) and shed their PRP status.[55] The Court rejected this "last ditch effort" argument.[56] The majority reasoned that eight requirements must be met for a landowner to qualify as a contiguous property owner under CERCLA; a "high bar" that not all ninety-eight individual landowners could clear.[57] In particular, the eighth requirement is that a person "did not know or have reason to know that the property was or could be contaminated by a release or threatened release of one or more hazardous substances."[58] The Court stated that there was abundant evidence of public knowledge both arsenic and lead contaminated.[59] As an example of public knowledge, the Court pointed out that all ninety-eight landowners purchased their respective

47. *Id*. at 1354 (referencing 42 U.S.C. § 9622(e)(1) (2018)).
48. *Id*. at 1352.
49. *Id*. at 1353 (citing 42 U.S.C. § 9607(b)(3) (2018)).
50. *Id*.
51. *Id*. at 1354 (referencing 42 U.S.C. § 9622(e)(1)).
52. *Id*.
53. *Id*.
54. *Id*.
55. *Id.* at 1356 (referencing 42 U.S.C. § 9607(g) (2018)).
56. *Id*.
57. *Id*. (citing 42 U.S.C. § 9607(q)(1)(A)(i)-(viii) (2018)).
58. *Id*. (citing 42 U.S.C. § 9607(q)(1)(A)(viii)(II) (2018)).
59. *Id*. (citing Christian v. Atlantic Richfield Co., 368 P.3d 131, 155 (2015)).

properties after the Anaconda Company constructed "Washington Monument sized smelter".[60]

Also, the Court again drew on CERCLA's underlying policy goals; even if the individual landowners met all eight requirements, CERCLA demands that contiguous landowners provide "full cooperation, assistance, and access" to the EPA's Superfund cleanup efforts.[61] The Federal Government's interpretation of the landowners' proposed plan for remedial action demonstrates that individual efforts conflict and interfere with the EPA's efforts.[62] Thus, the landowners would lose their status as contiguous owners regardless.[63] Overall, the Court held that the landowners need EPA approval before taking remedial action because they are PRPs under CERCLA; thus, the Court held that the Montana Supreme Court erred in this part of their holding.[64]

IV. CONCLUSION

Atlantic Richfield Co. v. Christian highlights a rift created by CERCLA. The benefits of a comprehensive environmental cleanup of hazardous pollutants result in obstacles for property owners on Superfund sites who wish to take individual remedial efforts.[65] In the dissent, Justice Gorsuch contends that the Court's interpretation of CERCLA, whereby landowners must receive EPA approval before taking remedial action on private property, is "paternalistic central planning," and "turns a cold shoulder to 'state law efforts to restore state lands.'"[66] Alternatively, the majority describes this as the "spirit of cooperative federalism [that] run[s] throughout CERCLA and its regulations."[67] Perhaps to account for this rift, the Court urged that if the landowners pursued approval from the EPA for their plan, the clash between the EPA and the landowners could be resolved "as Congress envisioned."[68]

60. *Id*.
61. *Id*.
62. *Id*. at 1353.
63. *Id*.
64. *Id*. at 1352.
65. *Id*. at 1347–48.
66. *Id*. at 1356.
67. *Id*.
68. *Id*. at 1355, 1357.